be applied. For powers to grant amendments he referred the court to Order 28 rules 1 and 12.

(a) *Rule 1* provides that "The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

(b) *Rule 12* provides:— "The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings."

After giving careful consideration to the submissions made by both counsel I held that subject to sections 38(2) and 42(2) of the Election Offences Ordinance, 1954 and the Election Petition Rules, 1954, the Rules of the Supreme Court, 1957 are applicable in election cases in Malaya. The question is under what circumstances will the court exercise its judicial discretion to allow a party to amend its pleadings especially in election petition proceedings?

It is clear that Order 28 rules 1 and 12 (which are copied verbatim from the English *Annual Practice* 1957) give the court extensive powers to permit parties to amend their pleadings. It is equally clear that on the authorities cited therein, I am impelled to hold that if an application is made before the hearing leave is readily granted on payment of costs so occasioned. It will not however be granted if his opponent will be placed in a less favourable position than he would have been if the amended pleading had been delivered in the first instance or if some injury would be caused to his opponent for which he cannot be compensated by payment of costs. (*Steward* v. *North Metropolitan Tramways Co.*[1]). In the present case, by allowing the petitioner to amend would in effect amount to permitting him to file a fresh petition out of time and thus depriving his opponent of the benefit of the period of limitation under section 38 of the Election Offences Ordinance, 1954 and thereby causing him an injury which cannot be compensated by costs.

Moreover the court will not readily allow at the trial an amendment, the necessity for which was abundantly apparent long before the hearing and then not asked for. (*Hipgrave* v. *Case* [2]). In the present case, the petitioner's counsel knew or ought to have known of such necessity long before the hearing, as he had been asked by respondent's counsel to give particulars of paragraph 4 of his petition. The court will be reluctant to give leave to amend pleadings at a late stage of the proceedings, unless there is strong justification for so doing (*Loutfi* v. *Czarnikow Ltd.*[3]). In the present case the petitioner has not shown to the court strong justification least of all any justification.

At page 469 of the White Book (*Annual Practice* 1957) under the heading of "Particulars" under Order 28 rule 12 it is stated that:—

"An application to amend or add to particulars if made a reasonable time before the trial, will generally be allowed on terms (*Yorkshire Provident Co.* v. *Gilbert*, [1895] 2 Q.B. 148; *Emden* v. *Burns* 10 T.L.R. 400), unless some injury would be caused by such amendment which could not be sufficiently compensated by the payment of costs (*Clarapede* v. *Commercial Union Association*, 32 W.R. 262, C.A.)."

Under the circumstances the petitioner's application for amendment is therefore refused. In view of this it is not necessary for me to express my opinion whether Indian authorities are or are not applicable to election cases in Malaya, nor is it necessary to interpret the limitations placed on the powers of the court to permit amendments, by section 39(2) of the Election Offences Ordinance, 1954.

[The learned judge then proceeded to give a lengthy summary of the facts of the case and concluded:] On the evidence before me the petitioner has not proved to my satisfaction that Baharum had been threatened as alleged nor has he proved to my satisfaction that any corrupt practice had been committed by respondent or with his knowledge or consent or by any of his agents. Under the circumstances, the petition is dismissed with costs. I hereby certify that the respondent Mohamed Zain bin Ahmad has been duly elected and that his election is not void. A report will accordingly be transmitted to the Election Commission.

Petition dismissed.

Solicitors: *Wan Mustapha & Co.; Jayadeva, Zahir & Ismi.*

THE CITY COUNCIL OF GEORGE TOWN & ANOR. v. THE GOVERNMENT OF THE STATE OF PENANG & ANOR.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) November 3, 1966]

[K.L. — Federal Court Suit No. X.1 of 1966]

Constitutional Law — Conflict between Federal law and the State law — Whether Federal Court has jurisdiction to declare State enactment void — Courts of Judicature Act, 1964, s. 48(1) — Constitution of Malaysia, arts. 75 & 128.

Legislation — Conflict between Federal and State laws — Municipal Ordinance (Cap. 133), s. 398B.

The petitioners applied to the Federal Court for a declaration that the City Council of George Town (Transfer of Functions) Order, 1966 and the Municipal (Amendment) (Penang) Enactment, 1966 were void by virtue of article 75 of the Constitution of Malaysia on the ground that they were inconsistent with the Local

Government Elections Act, 1960, of the Federation. An application was made on behalf of the respondents for an order to dismiss the petition on the ground that the Federal Court has no jurisdiction in the matter.

Held: the State enactment and the order made thereunder were clearly inconsistent with the Federal legislation and were therefore invalid and the Federal Court has jurisdiction to make an order so declaring.

FEDERAL COURT ORIGINAL JURISDICTION.

P. Mooney (*Miss S. C. Tang* with him) for the petitioners.

Au Ah Wah (Treasury Solicitor) for the respondents.

Cur. Adv. Vult.

Ong Hock Thye F.J.: Mr. Au Ah Wah, the Treasury Solicitor, moves this court, on behalf of the respondents, for an order dismissing the petition herein on the ground that the Federal Court, as constituted under the Courts of Judicature Act 1964, has no jurisdiction in the matter.

The question raised by the petition arose in this manner. On July 1, 1966 the Chief Minister of Penang took over the functions of the Mayor, whereupon the State Government proceeded to administer the municipal affairs of the city. This was done pursuant to an order termed the City Council of George Town (Transfer of Functions) Order, 1966, made under sub-section (1) of section 398B of the Municipal Ordinance, which section was inserted in the Municipal Ordinance by the Municipal (Amendment) (Penang) Enactment, 1966, an enactment of the State Legislature.

The petitioners claim that the said order and enactment, being inconsistent with a federal law, namely, the Local Government Elections Act, 1960, are void by virtue of article 75 of the Constitution of Malaysia and they ask for declarations to that effect. The article referred to is as follows:—

"If any State law is inconsistent with a Federal law, the Federal law shall prevail and the State law shall, to the extent of the inconsistency, be void."

The grounds on which the petition is sought to be dismissed are set out in an affidavit by an officer of the Attorney-General's Chambers, of which the relevant portion reads:—

"5. Under article 128(1)(a) of the Constitution of Malaysia the Federal Court has jurisdiction only to determine on the grounds that the State has no power to make laws, in this case section 389B of the Municipal Ordinance (S.S. Cap. 133), the City Council of George Town (Transfer of Functions) Order, 1966 (Penang P.U. No. 46 of 1966). In other words the Federal Court only has jurisdiction to determine on the competency of the State or Parliament to make laws.

6. By virtue of article 74 and the Ninth Schedule List II item 4 the State of Penang has the power to enact section 398B of the Municipal Ordinance (S.S. Cap. 133) and the City Council of George Town (Transfer for Functions) Order, 1966 (Penang P.U. No. 46 of 1966)."

From what I can gather of the learned treasury solicitor's turgid arguments, his contention is that, since the State of Penang "has the power to enact section 398B" together with the consequential order, whereas the "Federal Court only has jurisdiction to determine on the competency of the State or Parliament to make laws," the Ninth Schedule concludes the matter so far as this court is concerned.

The learned treasury solicitor persists in this contention notwithstanding his own voluntary admission in this court of a clear conflict between section 3 of the Local Government Elections Act, 1960, a Federal law, and section 398B of the State Enactment. In effect, he submits that this court is debarred from making any declaration affirming a fact which he does not condescend to dispute, although a High Court, in his view, may do so, forgetting the provisions of section 48(1) of the Courts of Judicature Act.

My view, with all respect, is that he understands neither article 75 nor article 128(1)(a) of the Constitution.

Article 128(1)(a) gives the Federal Court exclusive jurisdiction to determine "any question whether a law made by Parliament or the Legislature of a State is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of a State has no power to make laws." Since a State law is invalidated to the extent of any inconsistency therein with a Federal law, by article 75, notwithstanding even that the State law may be within the competency of the State Legislature, the learned treasury solicitor's argument is manifestly absurd; so much so that I consider it frivolous and vexatious enough to justify an order for costs were I not disallowed from doing so by the provisions of section 47 of the Courts of Judicature Act, 1964.

The application is dismissed.

Barakbah L.P. and **Azmi C.J.** concurred.

Application dismissed.

Solicitors: *Skrine & Co.*

S.E.A.C. CO. v. ANG AH BAK

[F.C. (Tan Ah Tah F.J., Chua and Winslow JJ.) November 10, 1966]

[Singapore — Federal Court Civil Appeal No. Y8 of 1966]

Landlord and Tenant — Tenant estopped from denying title of landlord by whom he is let into possession — Subletting — Tenant receiving rent in excess of 110% of rent paid by him — Material time — Whether landlord entitled to possession if tenant has stopped receiving excessive rents before termination of tenancy — Control of Rent Ordinance, (Cap. 242), s. 15(1)(g).